IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.499 OF 2005
IN
SUIT NO.794 OF 2004

Mrs.Mary S. Terron Plaintiff

versus

Anthony Clifford Terron & ors. Defendants

and

Gloria W/o.Anthony Terron Applicant

Ms.Purnima Bhatia for plaintiff.

Ms.J.P.Thakkar for defendant no.3.

Mr.S.Malik for applicant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th March 2006

PC :

1. The applicant has taken out this Chamber Summons to allow the applicant to join as Guardian of defendant no.1 for the conduct of suit.

2. Initially when this Chamber Summons was placed before a learned Single Judge of this

Court it was thought fit to first ascertain as to whether the first defendant is indeed of unsound mind and, therefore, he was directed to be examined by Head of the Psychiatry Department of J.J.Hospital, Mumbai.

3. The report was forwarded to this Court and initially there was a controversy as to whether the report is forwarded by the HOD or by an Associate Professor who was at the relevant time HOD.. Now, the Superintendent from Sir J.J. Group of Hospitals has pointed out that at the relevant time Dr.Vanashri Patil, although an Associate Professor was holding the charge of HOD of Psychiatry Department. Thus, there is no problem in taking the same on record.

4. The objection now raised by the plaintiff and other defendant namely defendant no.3 is that the applicant is vitally interested in the subject matter of the suit inasmuch as there is an allegation that the applicant has executed some documents in favour of third defendant. In these circumstances, I brought to the notice of learned counsel for applicant Order XXXII, Rule 4 of the CPC which deals with appointment of Guardian of a person of unsound mind. The provision stipulates

that the interest of such person to be appointed as Guardian should not be adverse to that of the minor and that he is not a plaintiff in the suit. The proviso to Order XXXII, Rule 1 CPC enacts a salutary principle and aims at avoiding conflict between interest and duty. The Guardian should represent and protect the person/party of unsound mind. To my mind, if the applicant has some interest in the controversy in the suit, it would not be desirable to have the applicant appointed as a Guardian of the defendant no.1.

5. Learned advocate for the plaintiff and defendant no.3 submits that they have no objection if the applicant is joined as party defendant to the suit in independent capacity and not as a Guardian of first defendant. As far as appointment of Guardian of first defendant is concerned, they submit that appropriate orders be passed by the Court considering the provisions of Order XXXII, Rule 4(4).

6. After hearing learned counsel appearing for the parties, to my mind, it appears that there is some interest of the applicant in the litigation. The applicant claims to be protecting interest of defendant no.1 and at the same time evincing

interest in the property which is subject matter of the suit. In such circumstances, it would be appropriate to implead the applicant as party defendant to the suit. Accordingly, applicant is impleaded as defendant no.4.

7. In the light of the report forwarded by Sir J.J.Group of Hospitals, normally an order appointing Guardian of defendant no.1 would have been passed but Ms.Bhatia appearing for plaintiff submits that she disputes that the first defendant is of unsound mind. Shri Malik appearing for applicant invites my attention to the deposition recorded by this Court and the admissions pertaining to the mental condition of first defendant therein.

8. In my view, at this stage, it is not necessary to pass an order in a suit filed in the year 2004 for the purposes of appointing a Guardian for defendant no.1. My attention is also invited to the fact that Notice of Motion is disposed of and at the relevant time defendant no.1 was represented by an advocate. So also he was so represented before the Appellate Court. Now, no interlocutory proceedings are pending in the suit. The stage is of filing written

statement.

9. In these circumstances, as far as appointment of Guardian of defendant no.1 is concerned, that issue can be considered later on. Prayer in the Chamber Summons in that behalf is kept open for being considered at a later stage. The report and other documents be taken on record in the suit. The suit to appear on board for directions on 12th June 2006 before the Chamber Judge with regard to considering the prayer for appointment of Guardian of first defendant. Within this period it would be open for the newly added defendant to file written statement. The amendment to implead the applicant as defendant no.4 will be carried out by the advocate for plaintiff within two weeks from today. Chamber Summons is disposed of.

(S.C.DHARMADHIKARI, J.)